

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-220630.2; B-220642.2 **DATE:** February 3, 1986

MATTER OF: Ulysses Painting Co.; Trans World Maintenance,
Inc.--Request for Reconsideration

DIGEST:

1. Request for reconsideration of prior decision--denying protest challenging rejection of protester's bid based on continuing pattern of nondisclosure of outstanding bond obligations by individual sureties on protester's bid bond--is denied where the record clearly disproves protester's contention on reconsideration that sureties' nondisclosures occurred only after the date on which protester's bid bond was submitted.
2. Ground of protest raised for first time in comments on agency report is untimely where it was or should have been known to the protester at the time the protest was filed.

Ulysses Painting Co. and Trans World Maintenance, Inc. (TWM), request reconsideration of our decision Ulysses Painting Co., et al., B-220630, et al., Dec. 26, 1985, 85-2 CPD ¶ , in which the protesters challenged the Navy's decision to reject Ulysses' bid under invitation for bids No. N62474-85-B-1732 (IFB-1732) for painting and repairing family housing at the Naval Air Station, Alameda, California, and TWM's bid under IFB No. N62474-85-B-1815 (IFB-1815) for replacement and repair of windows and balcony doors at the Department of Defense housing facility, Novato, California. We denied the protests, finding that the Navy reasonably determined that the protesters were not responsible bidders due to the failure of the individual sureties on both protesters' bid bonds to disclose all their outstanding bond obligations under other procurements. We deny the requests for reconsideration.

The same two individuals acted as sureties for Ulysses' bid under IFB-1732 and for TWM's bid under IFB-1815. In rejecting the bids, the Navy cited the

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sureties' failure to disclose as required all their other outstanding bond obligations in the affidavits submitted with the protesters' bid bonds under the two current IFBs, as well as under procurements at George Air Force Base (AFB) (F04609-85-D-0014), and Fort Shafter, Hawaii (DAHC77-85-D-0587). The protesters conceded that full disclosure had not been made in these cases. We found that the Navy had demonstrated a continuing pattern of nondisclosure by the sureties which provided a reasonable basis for the contracting officer to find the protesters nonresponsible. See Consolidated Marketing Network, Inc.-- Request for Reconsideration, B-218104.2, June 12, 1985, 85-1 CPD ¶ 675.

In its request for reconsideration, Ulysses argues that none of the sureties' nondisclosures on which the Navy relied preceded the submission of Ulysses' bid under IFB-1732 on August 13, 1985, and, as a result, no pattern of nondisclosure by the sureties could have existed at that time. This contention is clearly without merit. As noted above, two of the cases of nondisclosure cited by the Navy, and conceded by the protester, occurred in connection with bid bonds for procurements at George AFB and Fort Shafter, both of which took place before Ulysses' bid was submitted under IFB-1732; specifically, bid opening was on May 20 at George AFB and on June 18 at Fort Shafter--both before bid opening on August 13 under IFB-1732. There thus is no basis for Ulysses' contention that the pattern of nondisclosure by its sureties began only after its bid bond was submitted under the current IFB.

TWM's request for reconsideration is based on its contention that our original decision did not address one of TWM's arguments regarding the sufficiency of the bid bond submitted by the proposed awardee, USA Pro Co., Inc. TWM now states that it argued in its original protest that Pro Co.'s bid bond is defective because the individual who executed the certificate of sufficiency for one of Pro Co.'s sureties is not an officer of a bank or trust company as required by the terms of the certificate.

Although TWM knew or should have known this basis of protest when its protest was filed, this allegation was not raised in the original protest; at most, the allegation was alluded to in TWM's comments on the Navy's report, submitted approximately 2 months after the protest was filed. Since the issue was not raised within 10 days of when TWM knew or should have known this basis of protest, the allegation is untimely. See Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1985); Radionic Hi-Tech, Inc., B-219116, Aug. 26, 1985, 85-2 CPD ¶ 230. In any event, as we said in

our original decision, the certificate of sufficiency was signed by an individual who identified herself as a loan officer of a financial institution. We see no reason to now accept TWM's bare allegation that she is actually an employee of a mortgage company. Moreover, even if the certificate of sufficiency were defective as the protester alleges, in our view, it would constitute a relatively minor procedural irregularity which the Navy could allow the surety to correct after bid opening.



Harry R. Van Cleve
General Counsel